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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON**

ELF-MAN, LLC,

Plaintiff,

vs.

RYAN LAMBERSON,

Defendant.

No. 2:13-CV-0395-TOR

DEFENDANT LAMBERSON'S
REPLY MEMORANDUM IN
SUPPORT OF MOTION FOR LEAVE
TO FILE SECOND AMENDED
ANSWER, AFFIRMATIVE
DEFENSES, AND COUNTERCLAIM

Defendant Ryan Lamberson, through his counsel Lee & Hayes PLLC, submits this Reply Memorandum in Support of his Motion for Leave to File Second Amended Answer, Affirmative Defenses, and Counterclaims (ECF No. 21).

DEFENDANT LAMBERSON'S REPLY
ON MOTION FOR LEAVE TO AMEND- 1

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1 Mr. Lamberson had asked this Court to allow withdrawal of his First
2 Amended Answer, Affirmative Defenses and Counterclaim (ECF No. 18) to allow
3 him to join in the then-pending Fed. R. Civ. P. 12(b)(6) Motion. Since Judge
4 Lasnik had dismissed the entire case, and since there was a chance Judge Rice
5 would do the same, Mr. Lamberson wanted to be in a procedural posture to take
6 advantage of such a ruling. Since Judge Rice did not rule to dismiss the Complaint,
7 but only found that Count 3 of the Complaint did not state a claim, the request to
8 withdraw and join the 12(b)(6) Motion was mooted.
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12 In the alternative, Mr. Lamberson requested authority to file a Second
13 Amended Answer, Affirmative Defenses and Counterclaims. The interests of
14 justice support this amendment because it comes at the early stages of the case, and
15 at a time when plaintiff has still not complied with its outstanding discovery or
16 Initial Disclosure obligations. Mr. Lamberson's Memorandum in Opposition (ECF
17 No. 25) to Plaintiff's Motions in Response to Defendant's First Amended Answer
18 and Affirmative Defenses and Counterclaim (ECF No. 20) explains the procedural
19 posture that Mr. Lamberson has resolved his relationship with Comcast, his internet
20 service provider which was confronted with plaintiff's subpoena issued without
21 testimony. Consequently, Mr. Lamberson has dropped his state law claims for
22 tortious interference and defamation. Mr. Lamberson has dropped his Consumer
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1 Protection Act claim, but only for simplicity since he has continued to plead the
2 operative facts that state a claim thereunder. Mr. Lamberson has modified his
3 request for cancellation of the copyright, but still urges an Order for cancellation
4 directly to the plaintiff, which is entirely within the court's discretion. Mr.
5 Lamberson's two other counterclaims (a declaration of non-infringement and a
6 declaration of unenforceability) remain the same.
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9 Mr. Lamberson's Memorandum in Opposition (ECF No. 25) and its
10 supporting Declaration of counsel (ECF No. 26) explain that the request for leave to
11 file the Second Amended Answer, Affirmative Defenses and Counterclaim remain
12 in the interests of justice and are entirely supported by the facts known to
13 date. Amendment at this stage of the proceeding should be allowed and comports
14 with the interests of justice. See, for example, *Farnan v. Capistrano Unified School*
15 *District*, 654 F.3d 975 984 (9th Cir. 2011.)
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19 Consequently, defendant requests that his Motion to allow filing of the
20 proposed Second Amended Answer, Affirmative Defenses and Counterclaim.
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1 DATED this 10th day of February, 2014.

2 LEE & HAYES, PLLC
3

4
5 By: s/ J. Christopher Lynch

6 J. Christopher Lynch, WSBA #17462

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CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of February, 2014, I caused to be electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Maureen C. VanderMay efile@vandermaylawfirm.com

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